

AMENDED IN ASSEMBLY MAY 8, 2003
AMENDED IN ASSEMBLY APRIL 21, 2003
AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Assembly Member Bermudez

February 21, 2003

An act to amend Section 2220.05 of the Business and Professions Code, relating to medical services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Bermudez. Medical Board of California: prosecutorial and investigative resources.

Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Under the act, the board is responsible through its Division of Medical Quality for the regulation of the practice of physicians and surgeons. The act requires the board to prioritize its investigative and prosecutorial resources of specified cases in a certain manner, and authorizes the board to prioritize cases that are not specified as long as those cases are given lower priority.

This bill would authorize the board to determine that ~~requests for expenditure of investigative or prosecutorial resources~~ *certain information and complaints* cannot be pursued without detriment to the investigation and prosecution of the specified *priority* cases. The bill would require the board to provide the requester with a written ~~finding notice~~ to that effect and ~~to provide referral to another state or local~~

~~agency with jurisdiction to act, if appropriate containing information about other agencies to contact.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2220.05 of the Business and Professions
2 Code is amended to read:

3 2220.05. (a) In order to ensure that its resources are
4 maximized for the protection of the public, the Medical Board of
5 California shall prioritize its investigative and prosecutorial
6 resources so that physicians and surgeons representing the greatest
7 threat of harm are identified and disciplined expeditiously. Cases
8 involving any of the following allegations shall be handled on a
9 priority basis, as follows, with the highest priority being given to
10 cases in the first paragraph:

11 (1) Gross negligence, incompetence, or repeated negligent acts
12 that involve death or serious bodily injury to one or more patients,
13 such that the physician and surgeon represents a danger to the
14 public.

15 (2) Drug or alcohol abuse by a physician and surgeon involving
16 death or serious bodily injury to a patient.

17 (3) Repeated acts of clearly excessive prescribing, furnishing,
18 or administering of controlled substances, or repeated acts of
19 prescribing, dispensing, or furnishing of controlled substances
20 without a good faith prior examination of the patient and medical
21 reason therefor. However, in no event shall a physician and
22 surgeon prescribing, furnishing, or administering controlled
23 substances for intractable pain consistent with lawful prescribing,
24 including, but not limited to, Sections 725, 2241.5, and 2241.6 of
25 this code and Sections 11159.2 and 124961 of the Health and
26 Safety Code, be prosecuted for excessive prescribing and prompt
27 review of the applicability of these provisions shall be made in any
28 complaint that may implicate these provisions.

29 (4) Sexual misconduct with one or more patients during a
30 course of treatment or an examination.

31 (5) Practicing medicine while under the influence of drugs or
32 alcohol.

(b) (1) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(2) To ensure that the resources of the board are available for expenditure in a manner consistent with the protection of the public specified in this section, the board may determine that ~~requests for expenditure of its investigative or prosecutorial resources, for information or complaints relative to~~ cases not listed in subdivision (a); ~~cannot be pursued~~ *investigated or prosecuted* without detriment to the purpose of this section.

(3) If the board finds that a case ~~cannot be pursued~~ *investigated or prosecuted* pursuant to paragraph (2), ~~if the case involves information or a complaint from an individual who is not otherwise required by law to report that information to the board,~~ the board shall provide ~~that finding in writing to the requester and shall provide, if appropriate, referral to other state or local agencies that may have jurisdiction to act.~~ *notice to that individual in writing as follows:*

“The board finds that this case cannot be investigated or prosecuted at this time without detriment to higher priority cases involving death, serious bodily injury, repeated and unauthorized prescribing of controlled substances, sexual misconduct with a patient, or practicing medicine while under the influence of drugs or alcohol. You may wish to contact other agencies for further consideration, including the following:

1. The Department of Managed Health Care for matters regarding managed health care or the Department of Insurance for matters regarding insurance.

2. The local or county medical association in your region that may provide mediation in disputes between physicians and patients.

3. An attorney who can assess whether or not the circumstances of your case may result in civil remedies.

1 4. *Other state boards, local agencies, or regulatory*
2 *commissions that may have jurisdiction.”*

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4 *In no event shall the notice render an opinion or assessment of the*
5 *merits of the information or complaint.*

6 (c) The Medical Board of California shall indicate in its annual
7 report mandated by Section 2312 the number of temporary
8 restraining orders, interim suspension orders, and disciplinary
9 actions that are taken in each priority category specified in
10 subdivisions (a) and (b).

